

# **SALES AND USE TAX REVIEW COMMISSION**

## **RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

**BILL NUMBER:** S-2072

**DATE OF  
INTRODUCTION:** Jan. 22, 2001

**SPONSOR:** Senator Cardinale  
Senator Sinagra

**DATE OF  
RECOMMENDATION:** April 2, 2001

**IDENTICAL BILL:**

**COMMITTEE:** Senate Commerce

### **DESCRIPTION:**

(1) Broadens the applicability of the medical exemption by extending it to sales of medical equipment, durable medical equipment and medical supplies to medical and health services providers, even when they will use it in providing medical and health care services and will not transfer it to the purchaser of the service. (2) Further extends the scope of the exemption by exempting sales of all other "health care equipment and supplies" to medical and health care service providers, even when the equipment and supplies would not otherwise be exempt under this provision when sold to the patient. (3) Clarifies the exemption by specifying that it applies only to items for human use, and that it applies to replacement parts for exempt items. (4) Also makes some minor structural changes in the provision, for example by numbering the various elements of the exemption.

### **ANALYSIS:**

The proposed exemption would give providers of professional medical services a substantial tax advantage that other providers of nontaxable professional services do not have. Providers of nontaxable professional services have always been treated as the retail purchasers of the goods and services that they need to use in order to render their services and, unless these particular items are subject to some blanket exemption (e.g., food, drugs, transportation services), the professionals are liable for sales and use tax. Under the current exemption, certain categories of exempt items which are exempt when sold to

the patient or when sold to a health services provider for eventual transfer to the patient for home use, are instead deemed to be taxable tools of the trade when purchased by a doctor, physical therapist, or nonexempt private hospital or nursing home for use at their facility, and *not* transferred to the patient for use outside the facility. Thus, under current law, the health services providers purchasing such items are treated the same as attorneys purchasing research materials, architects purchasing drafting tools, concert musicians purchasing instruments, and accountants purchasing computers. It is reasonably foreseeable that passage of an amendment allowing medical and health services providers an exemption for purchases of their “tools of the trade” would influence other professional service providers to lobby for an exemption for purchases of costly taxable items used in their own professions.

Furthermore, the proposed exemption would give doctors, profit-making hospitals, and other medical services providers an exemption even broader than the one available to the patients themselves, since it would allow them an exemption for “all other health care equipment and supplies, not otherwise exempt under this section” (emphasis added). Under the current exemption, purchases of such items as cotton balls, bandages, testing strips, bed pans, blood pressure monitors, fever thermometers, toothpaste, and mouthwash are taxable, regardless of whether purchased by an individual patient, a physician, a dentist, a nonexempt hospital or a nursing home. Under the proposed amendment, however, while the *patient* would be required to pay sales tax on these items, the health services provider would not.

It appears that the expansion of the applicability of the exemption to the providers’ purchases is designed simply to lower the health service providers’ costs of doing business. The Commission finds no sound public policy reason to give the service provider greater exemption rights than the patient, particularly since other professional service providers are obligated to pay tax on the tools and supplies that they use and consume in rendering their nontaxable professional services. There is nothing that can be done in the proposed law that would require the service providers to pass on their overhead savings to the patient, and it appears that the exemption would serve only to increase the profits of medical and health services providers. Therefore the bill cannot even be supportable as a means of lowering health care costs for consumers, because there is no reason to believe that it would do so.

Enactment of this expanded exemption provision would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and “fair”. When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. The loss of revenue to the State could be substantial; leaving the State to find other means of generating the funds lost as a result of an expanded exemption that has little to recommend it as a matter of tax policy.

RECOMMENDATION: Oppose

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 7

COMMISSION MEMBERS ABSTAINING: 0

COMMISSION MEETING DATE: March 28, 2001

CMT:sp